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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

PERRY ALAN TAYLOR,

Defendant and Appellant.

F063040

(Super. Ct. No. 1425158)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Nancy Ashley, Judge.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Kane, J. and Franson, J.

This appeal involves two separate actions and appeals, one resolved by a jury verdict of guilty and another by a guilty plea, and the sentences imposed in each. In companion case No. 1423735 (Case 2) a jury convicted appellant, Perry Alan Taylor, of sale of methamphetamine (Heath & Saf. Code, § 11379, subd. (a)). Appellant Taylor later pled guilty, in the present case (No. 1425158) (Case 1), to false personation (Pen. Code, § 529, subd. (a)(3))¹ and admitted allegations that he had a prior conviction within the meaning of the three strikes law (§ 667, subd. (d)).

On this appeal, Taylor contends: 1) the court erred in its oral pronouncement of judgment; and 2) there is an error in his abstract of judgment. We will find merit to both contentions and remand the matter to the trial court for it to issue a corrected abstract of judgment. In all other respects, we affirm.

FACTS

On January 4, 2009, Taylor was cited for trespassing on property belonging to the Union Pacific Railroad. Taylor verbally identified himself as his brother, Charles Taylor. On October 20, 2010, Taylor's brother told a district attorney investigator that he had been denied two jobs because a warrant had been issued on the citation.

On May 10, 2011, the district attorney filed an amended information in the instant case charging Taylor with felony false personation, five prior prison term enhancements (§ 667.5, subd. (b)), an on-bail enhancement (§ 12022.1) and having a prior conviction within the meaning of the three strikes law.

On May 20, 2011, a jury convicted Taylor in Case 2 of sale of methamphetamine (Heath & Saf. Code, § 11379, subd. (a)), arising out of a September 21, 2010, drug sale and arrest. Separately, the court found true five prior prison term enhancements (§ 667.5,

¹ All further statutory references are to the Penal Code unless otherwise indicated. Additionally, section 529, subdivision (3) was renumbered to section 529, subdivision (a)(3) effective April 4, 2011, and operative on October 1, 2011. (Stats. 2011, ch. 15, § 381.)

subd. (b)), a prior conviction enhancement (Health & Saf. Code, § 11370.2), and allegations that Taylor had a prior conviction within the meaning of the three strikes law (§ 667, subd. (d)).

On May 23, 2011, as part of a plea bargain involving both Cases 1 and 2, Taylor pled guilty to the false personation charge in the instant case, admitted that he had a prior conviction within the meaning of the three strikes law, and the court dismissed the remaining enhancements. The agreement also provided that Taylor would be sentenced to a 16-month term on his false personation conviction, which would be imposed consecutively to the sentence he received in Case 2.

On June 20, 2011, the court sentenced Taylor in both cases to an aggregate term of 15 years 4 months as follows: the midterm of three years on his sale conviction in Case 2, doubled to six years because of Taylor's prior strike conviction, a three-year prior conviction enhancement in that count, a consecutive 16-month term (one-third the middle term of two years, doubled to 16 months because of Taylor's prior strike conviction) on his false personation conviction in the instant case, and five 1-year prior prison term enhancements.

DISCUSSION

Taylor contends that the court erred in its oral pronouncement of judgment because it purported to double the penalties imposed pursuant to section 1464, subdivision (a)(1) and Government Code section 76000, subdivision (a)(1) on the \$50 lab fee it imposed in case No. 1423735. Taylor also contends that his abstract of judgment erroneously indicates that the order requiring him to pay a \$900 probation report preparation fee was issued pursuant to section 1203.11. Respondent concedes and we agree.

The reporter's transcript of Taylor's sentencing hearing indicates that the court made two errors in pronouncing judgment in case No. 1423735 and the instant case. First, after it ordered Taylor, in Case 2, to pay a lab fee pursuant to Health and Safety

Code section 11372.5, it ordered him to pay a \$100 assessment pursuant to section 1464, subdivision (a)(1) and a \$70 assessment pursuant to Government Code section 76000. However, section 1464, subdivision (a)(1) provides that “a state penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses” Government Code section 76000, subdivision (a)(1) provides that “there shall be levied an additional penalty in the amount of seven dollars (\$7) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses” Thus, the proper penalty assessment on the \$50 lab fee imposed in Case 2, pursuant to section 1464, was \$50; whereas the proper penalty assessment on the lab fee pursuant to Government Code section 76000 was \$35. It follows that the court erred when it purported to impose a \$100 penalty assessment pursuant to section 1464 and a \$70 penalty assessment pursuant to Government Code section 76000 on the \$50 lab fee it imposed in case No. 1423735. However, the court’s erroneous statement was harmless because the clerk’s transcript and Taylor’s abstract of judgment each indicate that the court imposed only a \$50 penalty assessment pursuant to section 1464 and only a \$35 penalty assessment pursuant Government Code section 76000 on the \$50 lab fee at issue.

Additionally, the probation report recommended that the court order Taylor to pay a probation preparation fee of \$900 pursuant to section 1203.1b. However, the reporter’s transcript of Taylor’s sentencing hearing indicates that the court ordered Taylor to pay a \$900 “fine” pursuant to “section 1203.1(b).” Taylor’s abstract of judgment indicates that the court ordered Taylor to pay a \$900 probation report fee pursuant to “PC 1203.11.” It is clear from these circumstances that the \$900 “fine” the court ordered Taylor to pay was actually a probation report preparation fee. Further, since the authority for imposing a

probation report fee emanates from section 1203.1b,² it appears that the court reporter erred in transcribing this section in the reporter's transcript as section 1203.1(b) and that the abstract of judgment erroneously indicates that the probation fee was imposed pursuant to section 1203.11. Accordingly, we will direct the trial court to issue an amended abstract of judgment that cites section 1203.1b as the authority for the order requiring Taylor to pay a \$900 probation report preparation fee.

DISPOSITION

The trial court is directed to issue an amended abstract of judgment in Cases 1 (No. 1425158) and 2 (No. 1423735) which shows that the court imposed the \$900 probation report preparation fee pursuant to section 1203.1b and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

² Section 1203.1b, subdivision (a) provides, in pertinent part, "In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 1203.7, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203"